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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/057,187      | 01/23/2002  | Shoichi Toyoda       | B-4466 619463-7     | 5322             |

7590 06/04/2003  
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EXAMINER

LOCKETT, KIMBERLY R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2837

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                               |                                 |  |
|------------------------------|-------------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/057,187 | Applicant(s)<br>TOYODA, SHOICHI |  |
|                              | Examiner<br>Kim R. Lockett    | Art Unit<br>2837                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-9 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-8 of copending Application No. 10057186. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Patent Application 10057186 discloses the use of a butterfly damper comprising an inner circumferential frame; an outer circumferential frame; and at least one arm member having one end connected to the outer frame and an other end connected to the inner circumferential frame.

The difference between the two applications is the cross section with four curved corners.

It would have been obvious to one of ordinary skill in the art at the time the invention the invention was made to modify the application of 10/057187 to include the cross section as disclosed in 10/057186 in order to provide an efficient means of attaching speaker components.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohyaba et al.

Ohyaba et al discloses the use of a butterfly damper for a speaker comprising an inner circumferential frame; an outer circumferential frame having opposite end surfaces and an inner peripheral surface, said inner peripheral surface being connected to the opposite end surfaces to form opposite connecting edge portions; and at least one arm member (42) having one end connected to the outer circumferential frame and an other end connected to the inner circumferential frame, wherein: the one end of arm members(42) (claim 4) with a curved surface (claim 2) that is connected to a portion of the inner peripheral surface of the outer circumferential frame, the portion excluding the opposite connecting edge portions (see figure 2). Ohyaba et al further discloses the use of a resin integrally molded damper (column 3, lines 57-63)(claim 5) and injection molded resin (column 3, lines 63-68) (claims 6-8).

***Response to Arguments***

3. Applicant's arguments filed 3/24/03 have been fully considered but they are not persuasive. Regarding the applicant's argument's regarding the double patenting rejection, the applicant argues that the "an outer circumferential frame having opposite end surfaces and an inner peripheral surface, said inner peripheral surface being connected to the opposite end surfaces to form opposite connecting edge portions; and at least one arm member (42) having one end connected to the outer circumferential frame and an other end connected to the inner circumferential frame, wherein: the one end of arm members(42) (claim 4) with a curved surface that is connected to a portion of the inner peripheral surface of the outer circumferential frame, the portion excluding the opposite connecting edge portions "is not disclosed in application number 10/056186. These limitations are clearly recited in the claims of application number 10/057186, for example claim 9 clearly recites the above elements and interconnections. Furthermore Ohyaba clearly discloses the use of an arm member connected to a portion of the inner surface of the outer frame , where the outer frame has opposite end surfaces and an inner peripheral surface (see figure 3). The inner peripheral surface of Ohyaba is clearly disclosed in figures 2 and 3 and clearly has opposite end surfaces that form connecting edge portions.
4. Any inquiry of a **general nature or relating to the status of this application or filed papers** should be directed to the **Group receptionist whose telephone number is (703) 308-0956.**

Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center located at Crystal Plaza 4. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). The Group 2800 CP 4 Fax Center number is (703) 308-77(22 or 24). Fax numbers that provide an auto-reply fax receipt are: for before finals (703) 872-9318 and after finals (703) 872-9319.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose telephone number is **800-786-9199**. Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

For requesting **copies of Cited Art, Office Actions or the like, or General Problem solving**, calls should be directed to the **TC 2800 Customer Service Office** whose telephone number is **703-306-3329** or by fax at **703-306-5515**.

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose telephone number is **(703) 308-7615**. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi, can be reached on (703) 308-3370.

*Kim Lockett*  
**Patent Examiner**  
**Art Unit 2837**



**KIMBERLY LOCKETT**  
**PRIMARY EXAMINER**